IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

CRP.No. 997 of 2001

(TLB.5/1991 of TALUK LAND BOARD, VADAKARA.)

REVN. PETITIONER/APPLICANT/REVENUE:

STATE OF KERALA.

BY GOVERNMENT PLEADER SHRI S. PRAKASAM.

RESPONDENT/RESPONDENT/ASSESSEE:

KOLATHUR THOMMAN JOSEPH,
POOVARANI,
PALA, KOTTAYAM.

BY ADV. SRI.MATHEW JOHN (K)
ADV. SRI.BABY THOMAS
ADV. SRI.SHAJI P.CHALY

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 24/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

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C.R.P. No. 997 OF 2001

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Dated this the 24th August, 2007

O R D E R

The State is aggrieved by the order dated 21st May, 1996 passed by the Taluk Land Board, Vadakara in TLB (B) 5/91 . The dispute centers round to an extent of 1144.05 acres in R.Sy. No. 5/5A2 of Kavilumpara village. According to the State, the major portion of it is not a vested forest. According to the assessee, it is a vested forest. The Taluk Land Board dropped further proceedings in the case on the ground that the previous experience showed that the forest authorities did not properly assist the Taluk Land Board and therefore, it was not necessary to seek any clarification from the forest authorities. Thus the question, whether more than 1000 acres would constitute excess lands of the assessee, was dropped by the Taluk Land Board complaining of non-cooperation from the Forest Department and lack of co-ordination between the various Government Departments. This finding of the Taluk Land Board is perverse and illegal. The Taluk Land Board did not discharge the duty cast on it under the Kerala Land Reforms Act.

2. As per the final order dated 19.08.1981 passed by the Taluk Land Board, it was found that the assessee was not holding any excess land . That

order was sought to be re-opened under section 85 (9A) of Kerala Land Reforms Act. Notices were issued to the assessee. Thereafter, the impugned order was passed by the Taluk Land Board without adjudicating upon the issues involved in the case and without deciding one way or other whether the extensive land involved in the case is a vested forest or whether the assessee held excess lands. In short, the dispute is not settled by the Taluk Land Board which was legally bound to settle such disputes and to decide whether the assessee was holding excess land as on 01.01.1970. Not only the Taluk Land Board failed to discharge its duties, but in doing so, it had stated a reason of lack of co-ordination between the Government departments and lack of co-operation from the Forest Department. This is not a proper way of disposing of a case by the Taluk Land Board as contemplated under the Land Reforms Act.

3. The final order dated 19.08.1981 was sought to be re-opened on the ground that the share of the assessee in an extent of 1144.05 acres in R.S.No. 5/5A2 which was purchased as per document No.829/1955 was not accounted. The very purpose of re-opening was to find out as to whether the share of the assessee in that extent of land is an excess land or not. The assessee in his statement dated 16.03.1993 stated that he is not in possession of any extent of land in respect of which the proceedings were re-opened and that he has not given possession of any such land to any person. He also

stated that the land was taken over as vested forest under the Kerala Private Forest (Vesting and Assignment) Act. He also stated that a portion of the property was encroached upon. The cryptic statement dated 16.03.1993 is as vague as possible. On 19.03.1996, the assessee filed objection to the report of the Deputy Tahsildar in which it was stated that the property in R.S.No.5/5A2 and 6/1 of Kavilumpara village may be deleted from the assessee's account on the ground that the land was leased to various tenants even before 1963. He also stated that after 1963 he has not alienated any extent of land.

4. The statement dated 16.03.1993 and 19.03.1996 run contra to each other. If one statement is accepted, the other necessarily has to be rejected. The assessee himself has no case which statement is to be accepted. Even at this stage, the counsel has no instruction from the assessee as to which statement he has to stick on. Thus contradictory and irreconcilable statements are made by the assessee, which would tend to mislead the Taluk Land Board. Both the statements can never be true; either or both are untrue. Having wide powers for investigation and enquiry and having the machinery for making such local inspection and enquiry, the Taluk Land Board miserably failed to discharge its duties, thereby the dispute is not finally resolved and nobody is sure whether the land is a vested forest or not. It is not ascertained, whether the land is covered by any lease which is liable to be excluded and whether it is

liable to be excluded from the assessee's acount. If the land in question is a private forest which subsequently vested in the Government under the provisions of the Kerala Private Forest (Vesting and Assignment)Act, it would be an exempted category under section 81(1)(d) of the Kerala Land Reforms Act. If it is not a private forest, it could be included in the account of the assessee, provided it was owned, held or possessed by the assessee. So the primary question to be decided is whether it is a private forest which was vested in the Government under the Kerala Private Forests (Vesting and Assignment) Act or whether the land was owned, held or possessed by the assessee . It has come out that various other persons have also gained possession. What is the nature of such possession is not clear. Whether the lands in their possession are liable to be excluded is also a matter to be decided by the Taluk Land Board.

For the aforesaid reasons, the order of the Taluk Land Board is set aside. The Taluk Land Board shall dispose of the matter afresh after affording an opportunity of being heard to all concerned. The Taluk Land Board shall conduct such enquiry, investigation or inspection to collect the necessary data by deputing the officer concerned, under section 105A of the Land Reforms Act and get a comprehensive report from such officer or officers. The officer so deputed shall collect necessary details from the Forest Department as well.

The Taluk Land Board shall afford an opportunity of being heard to the Divisional Forest Officer, Kozhikode. After considering all the relevant facts, the Taluk Land Board shall pass a considered order dealing with the facts and circumstances of the case, the report of the officer deputed under section 105A of the Land Reforms Act and the evidence on record. The records would reveal that the assessee was not co-operating with the officer who made local investigation. If the presence of the assessee is required, the officer concerned may issue notice to the assessee to appear before him. The Taluk Land Board shall dispose of the matter expeditiously.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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Dated this the 24th August, 2007

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